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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H 2007 270

RANDALL AKIRA ICHIHANA
P.O. Box 11201
San Rafael, CA 94912

A C C U S A T I O N

Respiratory care practitioner license No. 5112

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 21, 1985, the Respiratory Care Board issued Respiratory care practitioner license Number 5112 to Randall Akira Ichihana (Respondent). The Respiratory care practitioner license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2009, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “(d) Conviction of a crime that substantially relates to the qualifications,
12 functions, or duties of a respiratory care practitioner. The record of conviction or a
13 certified copy thereof shall be conclusive evidence of the conviction.”

14 “(g) Conviction of a violation of any of the provisions of this chapter or of any
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
17 violate any provision or term of this chapter or of any provision of Division 2
18 (commencing with Section 500).”

19 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
20 substantially related to the qualifications, functions, or duties of a respiratory care
21 practitioner.”

22 7. Section 3752 of the Code states:

23 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
24 made to a charge of any offense which substantially relates to the qualifications,
25 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
26 the meaning of this article. The board shall order the license suspended or revoked, or
27 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
28 conviction has been affirmed on appeal or when an order granting probation is made

1 suspending the imposition of sentence, irrespective of a subsequent order under Section
2 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
3 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
4 accusation, information, or indictment.”

5 8. Section 3750.5 of the Code states:

6 "In addition to any other grounds specified in this chapter, the board may deny,
7 suspend, or revoke the license of any applicant or license holder who has done any of the
8 following:

9 "(a) Obtained or possessed in violation of law, or except as directed by a licensed
10 physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or
11 administered to another, any controlled substances as defined in Division 10 (commencing with
12 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
13 (commencing with section 4015) of Chapter 9 of this code.”

14 "(b) Used any controlled substance as defined in Division 10 (commencing with
15 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
16 (commencing with section 4015) of Chapter 9 of this code.”

17 9. Section 492 of the Code states:

18 “Notwithstanding any other provision of law, successful completion of any diversion
19 program under the Penal Code, or successful completion of an alcohol and drug problem
20 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
21 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
22 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in
23 that division, from taking disciplinary action against a licensee or from denying a license for
24 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
25 record pertaining to an arrest.”

26 “This section shall not be construed to apply to any drug diversion program operated by
27 any agency established under Division 2 (commencing with Section 500) of this code, or any
28 initiative act referred to in that division.”

10. California Code of Regulations (CCR), title 16, section 1399.370, states:

“For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

“(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act.”

COST RECOVERY

11. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case."

12. Section 3753.7 of the Code states:

"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees."

13. Section 3753.1 of the Code states:

"(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation. "

FIRST CAUSE FOR DISCIPLINE

(Possession and Use of a controlled substance)

14. Respondent is subject to disciplinary action under code sections 3750.5(a) [possession of a controlled substance], 3750.5(b) [use of a controlled substance], 3750(g) and CCR 1399.370(a) in that he was in possession of, and under the influence of cocaine, a

1 controlled substance. The circumstances are as follows:

2 15. On or about April 28, 2007, at about 3:30 a.m., the City of Petaluma
3 Police Department received a phone call from S., a female, complaining that her legs were cut
4 and bleeding. Police Officer Mario Giomi and six additional officers responded to the residence.
5 Respondent told the officers that he and S. lived at the residence, and his friend P., was visiting.
6 Respondent's 5 year old daughter was also in the residence, sleeping in an upstairs bedroom.
7 The Petaluma police officers separated the three adults, and interviewed them separately.

8 A. Officer Giomi interviewed respondent, and smelled a strong odor of
9 alcohol on respondent. Respondent stated that he, P. and S. had been drinking alcohol. All three
10 were in the hot tub earlier in the evening on April 27, 2007 and early morning hours of April 28,
11 2007. Respondent stated that he got out of the hot tub and went to his bedroom to sleep. He
12 stated that he awoke to S. screaming and yelling, but he did not know what she was screaming
13 about. Respondent claimed that S. began slapping him in the face and screaming at him.
14 Respondent told the officers that S. frequently would become intoxicated and act erratically. He
15 stated that he and S. were just friends and that they lived together but were not in a dating
16 relationship.

17 B. Officer Giomi interviewed P., and in the course of his interview, the
18 Officer noticed a CD case with a white powdery substance on it that had been separated into
19 three distinct lines. A short red and white straw and a single credit card in respondent's name
20 were next to the CD case. Through his training and experience, Officer Giomi recognized the
21 white powdery substance to be consistent with cocaine.

22 C. Officer Giomi asked respondent about the suspected cocaine and
23 respondent denied any knowledge of it. Respondent stated that he had been upstairs sleeping and
24 did not know what had happened downstairs. Officer Giomi performed a Health and Safety
25 11550(a) evaluation on respondent to determine if he was under the influence of a controlled
26 substance. Based on the Officer's evaluation, respondent was arrested for violating Health and
27 Safety code section 11350(a), possession of a controlled substance and Health and Safety code
28 section 11350(b), under the influence of a controlled substance. Respondent's wallet was

1 searched, and a small packet of white powdery substance was found. The substance was tested,
2 and the results indicated a presumptively positive test for cocaine.

3 16. On or about May 15, 2007, a felony criminal complaint titled *People of the*
4 *State of California vs. Randall Akira Ichihana*, case no. SCR 511853 was filed in Superior Court,
5 Sonoma County. Count I charged respondent with a felony, violating Health and Safety code
6 section 11350(a), possession of a controlled substance, to wit, cocaine. Count II charged
7 respondent with a misdemeanor, violating Health and Safety code section 11350(b), under the
8 influence of a controlled substance, to wit, cocaine. The complaint included an allegation of
9 circumstances in aggravation in light of *Cunningham v. California* (2007) 127 S.Ct. 856 and
10 Penal Code section 1170(b).

11 17. On or about May 17, 2007, respondent entered a plea of not guilty to
12 Counts I and II. On July 12, 2007, respondent stipulated to a factual basis for the plea, and the
13 Court found a factual basis for the plea. Respondent was referred to Project Intercept, and was
14 accepted. Respondent entered a guilty plea for Deferred Entry of Judgment on Count 1, and
15 Count II was dismissed on the District Attorney's motion. On November 21, 2007, respondent
16 successfully terminated the diversion program. On November 28, 2007, the Court dismissed
17 Count I.

18 18. Therefore, respondent's license is subject to discipline in that he was in
19 possession of a controlled substance and under the influence of a controlled substance, in
20 violation of code sections 3750.5(a) and 3750.5(b).

21 **SECOND CAUSE FOR DISCIPLINE**

22 (Conviction)

23 19. The allegations contained in paragraphs 15 through 17 are incorporated
24 herein.

25 20. On July 12, 2007, Respondent entered a plea of guilty to a felony,
26 violating Health and Safety code section 11350(a), possession of a controlled substance, to wit,
27 cocaine. His guilty plea constitutes a "conviction" within the meaning of code sections 3750(d)
28 and 3752, and is cause to discipline his license.

1 **THIRD CAUSE FOR DISCIPLINE**

2 (Dishonest Act)

3 21. The allegations contained in paragraphs 15 through 20 are incorporated
4 herein.

5 22. Respondent is subject to disciplinary action under section 3750(j)
6 [dishonest act] in that he failed to reveal that he was in a diversion program in his license renewal
7 application. The circumstances are as follows:

8 23. On or about January 30, 2008, respondent completed a Delinquent
9 Renewal Application for licensure. The application states: "CONVICTIONS: Since you last
10 renewed your license, have you been convicted of, diverted for, or pled guilty or nolo
11 contendere/no contest to any violation of any law of any state, the United States, or a foreign
12 country? You must disclose all misdemeanors and felonies including but not limited to civil,
13 welfare, health and safety, vehicle or penal code convictions/diversions) and any conviction
14 which has been dismissed pursuant to section 1203.4 of the Penal Code, or any similar provision
15 of the law in another state, the United States, or a foreign country."

16 24. Respondent checked the box next to "no" and signed the form under
17 penalty of perjury that the information was true and correct. However, at the time respondent
18 completed this application, he was aware but did not disclose that on July 12, 2007, he entered a
19 guilty plea to a felony, violating Health and Safety code section 11350(a), possession of a
20 controlled substance, to wit, cocaine; and that he was placed in a diversion program.

21 25. Therefore, respondent's license is subject to discipline due to his failure to
22 disclose his guilty plea and placement in a drug diversion program in his renewal application for
23 licensure, in violation of code section 3750(j), commission of a dishonest act.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
26 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

27 1. Revoking or suspending Respiratory care practitioner license Number
28 5112, issued to Randall Akira Ichihana;

2. Ordering Randall Akira Ichihana to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

3. Taking such other and further action as deemed necessary and proper.

DATED: October 1, 2008

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

SF2008402193

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